

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

JERMAINE DEMETRIUS MILES,)	Civil Action No.: 4:06-cv-02256-TLW-TER
)	
Plaintiff,)	
)	
v.)	
)	REPORT AND RECOMMENDATION
CAPT. W. BRIGHTHARP; LT. KEVIN)	
WILLIAMS; SGT. RONALD WILSON;)	
SGT. FRANKLIN JONES; CPL.)	
WINSTON JAMISON; CPL. ALBERT)	
SMITH; OFC. L. MATHIS; OFC.)	
PALMER; AND OFC. ADAM WADE,)	
)	
Defendants.)	
)	

I. PROCEDURAL BACKGROUND

The plaintiff, Jermaine D. Miles (“plaintiff/Miles”), filed this action under 42 U.S.C. § 1983¹ on August 10, 2006. Plaintiff alleges that his constitutional rights were violated by defendants via improper conditions of confinement, cruel and unusual punishment, and discrimination. On February 14, 2007, defendants filed a motion to dismiss or, in the alternative, a motion for summary judgment along with a memorandum in support of that motion. (Document #20). Because the plaintiff is proceeding pro se, he was advised on or about February 15, 2007, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th. Cir. 1975), that a failure to respond to the defendants’ motion to dismiss/motion

¹All pretrial proceedings in this case were referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rule 73.02(B)(2)(d), DSC. Because this is a dispositive motion, the report and recommendation is entered for review by the District Judge.

for summary judgment could result in dismissal of his complaint. The plaintiff has failed to file a response.

A. RULE 41(B) DISMISSAL

A complaint may be dismissed pursuant to Rule 41 (b) of the Federal Rules of Civil Procedure for failure to prosecute and/or failure to comply with orders of the court. Ballard v. Carlson, 882 F.2d 93 (4th Cir. 1989), cert. denied 493 U.S. 1084 (1990) and Chandler Leasing Corp. v. Lopez, 669 F.2d 919 (4th Cir. 1982). In considering whether to dismiss an action pursuant to Rule 41(b), the court is required to consider four factors:

- (1) the degree of plaintiff's responsibility in failing to respond;
- (2) the amount of prejudice to the defendant;
- (3) the history of the plaintiff in proceeding in a dilatory manner; and,
- (4) the existence of less drastic sanctions other than dismissal.

Davis v. Williams, 588 F.2d 69 (4th Cir. 1978).

In the present case, the plaintiff is proceeding pro se so he is entirely responsible for his actions. It is solely through plaintiff's neglect, and not that of an attorney, that no responses have been filed. Plaintiff has not responded to defendants' motion to dismiss/motion for summary judgment or the court's *Roseboro* order requiring him to respond. The undersigned concludes the plaintiff has abandoned his lawsuit. No other reasonable sanctions are available. Accordingly, it is recommended that this action be dismissed pursuant to Fed. R. Civ. Proc. 41(b).

II. DISCUSSION

The undersigned recommends dismissal of the complaint pursuant to Fed. R. Civ. 41(b) as set forth above. In addition to this recommendation, the undersigned will also briefly discuss defendants' motion for summary judgment.

Defendants served plaintiff with defendants' Requests for Admission on or about January 10, 2007. More than thirty (30) days have elapsed and plaintiff has failed to respond to the Requests for Admission. Pursuant to Rule 36, Fed. R. Civ. P., the matters set forth in the Request of Admission are admitted. Accordingly, it is established that his allegations and relief sought by plaintiff are moot because he has been transferred to another facility and it is established that there are no remaining issues of fact.

Plaintiff has failed to respond to defendants' motion for summary judgment or challenge the Requests for Admission. Therefore, it is recommended that defendants' motion for summary judgment be granted on this ground in that there is no genuine issue of material fact to adjudicate and the allegations and relief sought by plaintiff are moot.

III. CONCLUSION

The plaintiff has failed to prosecute his action by not responding to the motion for summary judgment filed by the defendants and has failed to comply with an order of the court under Rule 41(b) of the Federal Rules of Civil Procedure. Therefore, it is

RECOMMENDED that this complaint be dismissed pursuant to Federal Rule of Civil Procedure 41(b) as set forth above. In the alternative, it is recommended that defendants' motion for summary judgment (document #20) be **GRANTED IN ITS ENTIRETY** and that this matter

be **DISMISSED** for the reasons set forth above.

Respectfully submitted,

s/Thomas E. Rogers, III
Thomas E. Rogers, III
United States Magistrate Judge

April 24, 2007
Florence, South Carolina

The parties' attention is directed to the important information on the attached notice.